IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

INTELLECTUAL VENTURES I LLC and INTELLECTUAL VENTURES II LLC,	)	
Plaintiffs,	)	C.A. No. 6:21-cv-01088-ADA
v.	)	**JURY TRIAL DEMANDED**
GENERAL MOTORS COMPANY and, GENERAL MOTORS LLC,	)	
Defendants.	)	

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

In this District, there is no right to file a surreply, and surreplies are "heavily disfavored." *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App'x 749, 751 n.2 (5th Cir. 2014). Courts should therefore deny a request to file a surreply unless (1) the reply brief raises new arguments, and (2) the proposed surreply is necessary to respond to those new arguments. *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017). Here, neither of the two arguments cited by IV from GM's Reply is new, and IV's Motion For Leave to File Sur-Reply (Dkt. 48 "Motion") should be denied.

First, GM explained in detail that its presence in this District is not related to the claims in this case in its opening brief. *E.g.*, Dkt. 34 at 1 ("the record demonstrates a demonstrable disconnect between the substance of this case and GM's presence in the Western District of Texas"), at 3 ("None of the patented technology appears connected to the Western District of Texas."), at 4 (noting the lack of connection between the Austin IT Center or its employees to the development of the accused technologies), at 5 (explaining the GM facilities in Texas listed in IV's Complaint "have no bearing on this case"), at 11-12 (detailing why "GM's ties to Texas are irrelevant" to IV's claims). GM provided evidence in support of its arguments through sworn declarations. Dkt. 34-2 – Dkt. 34-5.

Second, GM explained in its opening brief and supporting declarations that a vast majority of witnesses possessing information about the design, development and implementation of the accused technologies—including GM employees and GM suppliers—are in EDMI. *E.g.*, Dkt. 34 at 4 (explaining a significant number of third parties who designed and developed the accused technologies are located in EDMI), at 9 (same); *id.* at 4 (identifying the GM personnel with knowledge of the design, development, and operation of the allegedly infringing hardware and software are located in EDMI), at 3 (same), at 10-12 (same); *id.* at 7 ("GM designs, develops, or implements the accused technologies in the Eastern District of Michigan"); *see also* Dkt. 34-2. GM's opening brief also explained the

"documentary evidence relevant to the accused technology" is in EDMI with its Product Development Team and stored on Michigan-based servers, including "technical information and documents," including "source code." *Id.* at 7-8.

GM put forth its arguments and evidence showing Michigan is a clearly more convenient venue in its opening motion. Despite extensive discovery, IV was unable to contest that evidence and often simply ignored it. GM did not raise any new arguments in its Reply; a surreply is not an opportunity to back-fill what was missed in an opposition. IV's request should be denied. *See Williams v. Aviall Servs. Inc.*, 76 F. App'x 534, 535 (5th Cir. 2003) (affirming denial of request to file surreply where "proposed surreply included no new arguments or evidence").

Dated: June 28, 2022

Respectfully submitted,

/s/ Jeffrey D. Mills

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CERTIFICATE OF SERVICE

I certify that on June 28, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have consented to electronic notification.

/s/ Jeffrey D. Mills
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